

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2006-142-C

In re:)	
)	
Petition of Charter Fiberlink SC – CCO, LLC)	RETURN TO MOTION
for Arbitration of Certain Terms and)	(on behalf of Piedmont Rural
Conditions of Proposed Agreement with)	Telephone Cooperative, Inc.)
Piedmont Rural Telephone Cooperative, Inc.)	
Concerning Interconnection under the)	
Communications Act of 1934, as amended by)	
the Telecommunications Act of 1996)	
)	

Piedmont Rural Telephone Cooperative, Inc. (“Piedmont”) respectfully submits this Return to the Emergency Motion of Charter Fiberlink SC – CCO, LLC (“Charter”) for Expedited Interim Relief. By its Motion, Charter asks the Public Service Commission of South Carolina (“Commission”) to order Piedmont immediately to enter into an interim traffic exchange agreement with Charter. In response to the motion, SCTC respectfully submits the following:

1. Charter’s Motion must be denied because Piedmont has no legal duty to enter into an interim “traffic exchange” agreement with Charter, as Charter alleges. As an initial matter, the regulation cited by Charter, 47 C.F.R. § 51.715, does not even apply to Piedmont. The regulation relates to the obligations of *incumbent local exchange carriers* (ILECs). Obligations specific to ILECs arise from Section 251(c) of the Telecommunications Act of 1996 (“Act”). Piedmont is a rural telephone company, as defined in Section 153(37) of the Act, and is currently exempt from Section 251(c) obligations, pursuant to Section 251(f)(1) of the Act. *See also* First Report and

Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (rel. August 8, 1996) ("Local Competition Order"), at para. 1068 (in the context of its discussion of interim transport and termination rates, the Federal Communications Commission stated it had considered the economic impact of the rules on small ILECs, and noted that "certain small incumbent LECs are not subject to our rules under section 251(f)(1) of the 1996 Act, unless otherwise determined by a state commission[.]").

2. Furthermore, even if 47 C.F.R. § 51.715 is applicable, Piedmont is in full compliance with the regulation. 47 C.F.R. § 51.715 requires only that, under certain circumstances and where a requesting carrier does not have an existing interconnection arrangement, an incumbent local exchange carrier (ILEC) must *provide transport and termination* to the requesting carrier on an interim basis. Piedmont has been transporting and terminating Charter's traffic and continues to do so on an interim basis. Charter has not complained that calls from Charter customers to Piedmont customers are not being completed. Thus, Piedmont is already providing transport and termination service for Charter, and a written "interim arrangement" is not needed. If, however, the Commission finds that a written agreement would be helpful, Piedmont respectfully submits that the proposed agreement attached hereto as Exhibit A is appropriate, because it indicates Piedmont's consent to provide transport and termination to Charter on an interim basis, as it is currently doing. The proposed agreement in Exhibit A is a "short form" interim arrangement that is limited to the specific requirements set forth in 47 C.F.R. § 51.715.

3. Piedmont believes the response contained in paragraphs 1 and 2 above contains the necessary legal and factual basis upon which the Commission can resolve the issues raised in Charter's Motion. However, in order to set the record straight, Piedmont feels it must respond to

some of the allegations contained in Charter's Motion. Despite Charter's statements and suggestions to the contrary, Piedmont has voluntarily provided transport and termination and has moved forward in an attempt to enter into a written interim arrangement with Charter that goes well beyond any legal duty Piedmont may have. Piedmont's willingness to enter into such an expanded interim arrangement, however, was based on Charter's assurance that it was seeking a traffic exchange agreement for EAS traffic only, and did not intend to provide competitive service in Piedmont's local service area. Throughout this process, Piedmont has repeatedly asked Charter for clarification on this issue, after it was discovered that Charter is serving some customers located in Piedmont's local service area. Piedmont believes it is improper for Charter to provide such service without first obtaining an interconnection agreement that would establish the necessary connections as well as the terms and conditions for the provision of such service by Charter. In response to Piedmont's questions regarding Charter's service within Piedmont's local service area, Charter (1) initially *denied* providing service to any customers located in Piedmont's local service area; (2) then *offered to investigate* but did not get back to Piedmont on Charter's possible provision of service to customers in Piedmont's local service area; (3) when provided with actual customer names and addresses by Piedmont, *admitted* it may "accidentally" be providing service to several Piedmont customers due to inaccuracies in its database, but denied any intent to do so; and (4) after Charter repeatedly sidestepped the issue of whether it was providing service to customers in Piedmont's local service area, Charter then *accused* Piedmont of illegally attempting to *prevent* Charter from providing service to customers located in Piedmont's local service area. Based on the history of these negotiations, Piedmont is reluctant to speculate as to what Charter's intentions may be with respect to an expanded interim arrangement.

4. The delay in reaching an expanded interim arrangement has been due to Charter's reluctance to address the issue of service to customers in Piedmont's local service area, and not the result of any action or inaction on the part of Piedmont. Piedmont's concerns have been (1) that the interim arrangement accurately states the facts and reflects a meeting of the minds on the issues presented; and (2) that any competitive service by Charter in Piedmont's local service area is covered by the terms and conditions of a full and complete interconnection agreement between the parties and is not provided surreptitiously under the guise of an interim transport and termination arrangement.

5. Charter's statement that Piedmont agreed to the expanded interim arrangement language shown in Exhibit A to Charter's Emergency Motion completely ignores the fact that the agreement does not cover those Charter customers that are located within Piedmont's service area. These customers would be impacted by Charter's proposed expanded interim arrangement because they improperly have been assigned telephone numbers that are associated with Verizon's Laurens exchange. Piedmont has repeatedly expressed concerns about this situation and the need to ensure it does not become a larger problem before a final interconnection agreement is executed and approved, and Piedmont's consent to the language of the agreement has clearly been conditioned on attempting to address the issue of Charter's service to customers located in Piedmont's local service area.

6. Despite Piedmont's concerns, and in order to minimize the impact on end user customers, Piedmont offered to modify Charter's proposed expanded interim arrangement to take into account the service currently being provided by Charter to customers located within Piedmont's local service area. To that end, on April 12, 2006, Piedmont proposed the expanded

interim arrangement attached hereto as Exhibit B, which is shown as a redline to the agreement found at Exhibit A to Charter's Motion. Piedmont's expanded interim arrangement proposal represents a good faith attempt on the part of Piedmont to prevent disruption of service to customers whom Charter is serving in the absence of an interconnection agreement. Instead of responding to Piedmont's proposed modification or proposing different language, Charter's response was to accuse Piedmont of attempting to impede competitive service in violation of antitrust laws, and to "demand" that Piedmont immediately execute Charter's proposed expanded interim agreement, which goes beyond any legal obligation Piedmont may have, and does not accurately reflect the facts of the situation or the intent of the parties.

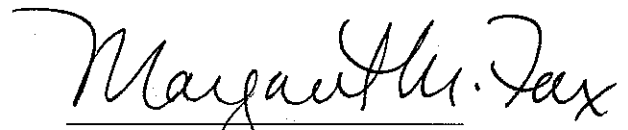
7. Piedmont has diligently and in good faith engaged in negotiations with Charter to enter into both a final interconnection agreement and an expanded interim arrangement. However, Piedmont believes it has met its obligations under the Act and is not required to enter into an expanded interim arrangement that would enable the provision of competitive service in Piedmont's service area in the absence of a complete and final interconnection agreement, much less to be forced to do so under the guise of an interim arrangement for the provision of transport and termination services. Charter's demand that Piedmont allow the provision of such service pursuant to an expanded interim transport and termination arrangement under the terms and conditions proposed by Charter is unreasonable.

8. Finally, it should be noted that Charter's claims of impairment of service to its customers and harm to its business and reputation are *not* the result of any action or inaction by Piedmont, but instead are the result of Charter's own failure to establish a workable business plan that complies with industry standards. Those standards clearly require Charter to take into

consideration the length of time it will take to negotiate interconnection agreements with *all* applicable companies and to provision the necessary network facilities *before* establishing an NXX effective date. *See* ATIS-0300037 – Intercompany Responsibilities Within the Telecommunications Industry Issue 3. Furthermore, the failure of the parties to come to an interim resolution of these matters is the direct result of Charter's changing representations regarding its intent and its provision of service and, again, Charter's failure to obtain interconnection and necessary services from other carriers, including Piedmont, prior to providing service to end user customers.

WHEREFORE, Piedmont Rural Telephone Cooperative, Inc. respectfully requests that the Commission deny Charter's Emergency for Expedited Interim Relief for the reasons stated herein, and grant such other and further relief as is just and proper.

Respectfully Submitted,



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Attorneys for Piedmont Rural
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May 22, 2006
Columbia, South Carolina

MUTUAL EAS TRAFFIC EXCHANGE
INTERIM ARRANGEMENT

This Interim Arrangement ("Arrangement") is effective as of the Effective Dates set forth below, by and between Charter Fiberlink SC- CCO, LLC ("Charter") with offices at 12405 Powerscourt Drive, St. Louis, Missouri 63131, and Piedmont Rural Telephone Cooperative, Inc. ("PRTC") with offices at 201 Anderson Drive, P.O. Box 249, Laurens, SC 29360.

WHEREAS, Charter is a Competitive Local Exchange Carrier providing telecommunications services within the state of South Carolina, and

WHEREAS, PRTC is an Incumbent Local Exchange Carrier in the State of South Carolina; and

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Charter and PRTC hereby agree as follows:

1. Purpose

The Parties agree their performance hereunder is to comply and conform with each party's obligations under 47 CFR § 51.715.

2. TRANSPORT AND TERMINATION RATE

PRTC shall provide transport and termination of telecommunications traffic under this interim arrangement, pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates by a state commission under Sections 251 and 252 of the Act.

PRTC agrees under this agreement to transport and terminate local/EAS traffic originated by Charter at an interim rate of \$0.00 per minute of use.

3. EFFECTIVE DATE & APPROVAL

This Arrangement shall be effective as of the date it is executed by the second Party hereto. Either Party may submit this Arrangement to the South Carolina Public Service Commission ("Commission") for approval pursuant to 47 U.S.C. § 252. In the event that the Commission rejects this Arrangement, the Parties agree to petition the Commission to establish the terms and conditions applicable to their exchange of traffic.

Charter Fiberlink, SC-CCO, LLC

Piedmont Rural Telephone Cooperative, Inc.

By: _____

By: _____

Print Name: _____

Print Name: _____

Its: _____

Its: _____

Date: _____

Date: _____

MUTUAL EAS TRAFFIC EXCHANGE
INTERIM ARRANGEMENT

This Mutual EAS Traffic Exchange Interim Arrangement ("Arrangement") is effective as of the "Effective Date, as set forth in Section 9, by and between Charter Fiberlink SC- CCO, LLC. ("Charter") with offices at 12405 Powerscourt Drive, St. Louis, Missouri 63131, and Piedmont Rural Telephone Cooperative, Inc. ("PRTC") with offices at 201 Anderson Drive, P.O. Box 249, Laurens, SC 29360.

WHEREAS, Charter is a Competitive Local Exchange Carrier providing telecommunications services within the state of South Carolina in geographic territories not including PRTC's Local Service Area and not otherwise in competition with PRTC for local exchange service; and

WHEREAS, PRTC is an Incumbent Local Exchange Carrier in the State of South Carolina; and

WHEREAS, Charter and PRTC wish to establish an interim arrangement for the exchange of Extended Area Service ("EAS") calls between their networks;

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Charter and PRTC hereby agree as follows:

1.0 DEFINITIONS

As used in this Arrangement, the following terms shall have the meanings specified below:

- 1.1 "Local/EAS Traffic" is defined for all purposes under this Arrangement as telecommunications traffic which is primarily voice traffic, that is originated by an end user of a Party who is physically located in one exchange, and that terminates to an end user of the other Party who is physically located in another exchange, where the originating and the terminating exchanges have EAS between them. The terms "exchange" and "EAS exchanges" are defined and specified in the PRTC, BellSouth and Verizon General Subscriber Service Tariffs for the State of South Carolina.
- 1.2 "Party" means either Charter or PRTC, and "Parties" means Charter and PRTC.
- 1.3 "PRTC's Local Service Area" means the geographic area comprising the exchanges (as defined in PRTC's General Subscriber Service Tariff)

within which PRTC provides retail telecommunications services as an Incumbent Local Exchange Carrier.

2.0 **SCOPE**

- 2.1 Each Party represents that it holds itself out as a telecommunications carrier and complies with appropriate federal and state requirements applicable to such entities, including but not limited to directly providing retail telecommunications to end user customers.
- 2.2 Charter submitted a written interconnection request to PRTC, and the Parties intend to negotiate an interconnection agreement pursuant to 47 U.S.C. § 251. In the interim, the Parties mutually desire to enter into an arrangement whereby Local/EAS Traffic (as defined in Section 1.1 of this Arrangement) (i) that originates from PRTC end users located in PRTC's Local Service Area and terminates to Charter's end users located outside PRTC's Local Service Area, but within the PRTC EAS exchanges, and (ii) that originates from Charter end users located outside PRTC's Local Service Area, but within the PRTC EAS exchanges, and terminates to PRTC end users located within PRTC's Local Service Area, can be completed. This Arrangement does not apply to traffic originated by or terminated to Charter end users located within PRTC's Local Service Area. Under this Interim EAS Traffic Exchange Arrangement, Charter will not provide to end users physically located within any PRTC exchanges. As such, Charter will not accept orders from customers with address' within PRTC service territory or from PRTC end users with telephone numbers from the following NPA/NXXs (864/575, 677, 861, 876, 969, 682, 683). Prior to negotiating this agreement, Charter accepted orders for service from XX# of PRTC customers. These customers will be grand fathered for the purposes of this agreement. However, acceptance of new orders beyond this limited base shall be considered a violation of this agreement. Neither the existence of this Arrangement nor either Party's performance hereunder will toll, delay, alter, extend, reduce or otherwise modify any statutory time frames set forth in 47 U.S.C. Section 252 that may apply to the negotiation, mediation, arbitration and approval of an interconnection agreement being negotiated between the Parties.
- 2.3 In order to accomplish the Local/EAS Traffic exchange in an appropriate manner, the Parties propose and agree to the following terms and conditions, which shall apply to the Parties' exchange of Local/EAS Traffic on an interim basis until such time as a final interconnection agreement is negotiated between the Parties and approved by the South Carolina Public Service Commission {"Commission"). This Arrangement shall automatically terminate (i) when the final Interconnection Agreement between the Parties is approved by the Commission, or (ii) if Charter is required to establish direct interconnection with PRTC for the exchange of Local/EAS traffic pursuant to the final approved Interconnection Agreement, when such direct connection has been established, whichever occurs later.

3.0 NUMBERS

Upon execution of this Arrangement, PRTC shall open Charter's NPA-NXX code(s) associated with rate centers within PRTC's EAS exchanges in PRTC's switch, but not Charter NPA-NXX code(s) associated with rate centers within PRTC's Local Service Area. PRTC shall treat calls from PRTC end users to Charter end users as Local/EAS Traffic when they terminate to Charter end users physically located within the exchange(s) associated with the Charter NPA-NXX(s) in PRTC's EAS exchanges, and Charter shall treat calls to PRTC end users from Charter end users physically located within the exchange(s) associated with the NPA-NXX(s) in PRTC's EAS exchanges as Local/EAS traffic.

4.0 LOCAL/EAS TRAFFIC

Calls between PRTC end users and Charter end users who are physically located in the exchange(s) associated with the NPA-NXX(s) in PRTC's EAS exchanges shall be rated as Local/EAS Traffic. The Parties agree on the following arrangements for routing Local/EAS Traffic under this Arrangement:

- 4.1 Local/EAS Traffic originated by PRTC end users shall be routed over the existing trunk facilities, on the Effective Date, between PRTC and BellSouth's Greenville Tandem, as long as sufficient capacity exists, and BellSouth accepts the traffic over such trunks. Local/EAS Traffic originated by Charter end users shall also be routed through BellSouth's Greenville Tandem. This Arrangement shall automatically terminate (i) when the final Interconnection Agreement between the Parties is approved by the Commission, or (ii) if Charter is required to establish direct interconnection with PRTC for the exchange of Local/EAS traffic pursuant to the final approved Interconnection Agreement, when such direct connection has been established, whichever occurs later.

5.0 COMPENSATION

- 5.1 Charter agrees to be responsible for all transit charges associated with Local/EAS Traffic originated by its end users, and to reimburse PRTC for all transit charges actually assessed to and paid by PRTC to any third party carriers applicable to the routing of Local/EAS Traffic that originates on PRTC's network and terminates to Charter's NPA-NXXs that were opened in PRTC's switch pursuant to Section 3 of this Arrangement.
- 5.2 Upon a reasonable request by Charter, PRTC shall provide Charter with confirmation that BellSouth is charging PRTC for Charter transit traffic and the rate for such charges. Because BellSouth does not provide a detailed transit bill for PRTC-originated transit traffic, PRTC shall bill Charter for reimbursement of the transit charges associated with Charter traffic by measuring the number of MOU originated by PRTC to Charter's

LRN multiplied by the transit rate BellSouth is charging PRTC. Supporting documentation for PRTC's bill for transit charges shall also be provided upon request.

5.3 Each Party shall be responsible for all costs and expenses for transporting its end users' Local/EAS Traffic to their respective meet points with BellSouth. It is both Parties understanding that the BellSouth transit rate covers the cost from the meet point of one Party to the meet point of the other Party, therefore there are no separate transport costs.

5.4 There shall be no other compensation paid between the Parties for the exchange of Local/EAS Traffic except as listed in Section 5.1.

6.0 PAYMENT

In consideration of the services and facilities provided under this Arrangement, the Parties shall bill each other on a monthly basis all applicable charges set forth in this Arrangement. The Party billed ("Billed Party") shall pay to the invoicing Party ("Billing Party") all undisputed amounts within thirty (30) days from the bill date. If the payment due date is a Saturday, Sunday, or a designated bank holiday, payment shall be made by the prior business day.

7.0 TOLL TRAFFIC

Charter and PRTC acknowledge that intrastate, interstate and international toll traffic originated by or terminated to Charter end users or PRTC end users, as the case may be, will continue to be routed in accordance with Bellcore Traffic Administration instructions and is not part of this Arrangement.

8.0 RESERVATION OF RIGHTS

Notwithstanding anything to the contrary in this Arrangement, neither Party waives, and each Party hereby expressly reserves, its rights (a) to assert positions contrary to, inconsistent with, or different than those set forth in this Arrangement in connection with the negotiation of the formal interconnection agreement described in Section 2 of this Arrangement or any other agreement between the Parties, or otherwise; and (b) to seek changes in this Arrangement through the negotiation and/or arbitration of an agreement for the exchange of traffic between the Parties upon terms and conditions different from this Arrangement. Nothing in this Arrangement shall be deemed to limit or prejudice any position a Party has taken or may take before the South Carolina Public Service Commission, the FCC, any other state or federal regulatory or legislative bodies, courts of applicable jurisdiction, or industry fora. Furthermore, nothing herein shall be construed as or is intended to be a concession or admission by either Party that any rate, term, provision or condition in this Arrangement is required by applicable law or binds or otherwise obligates a Party to include or accept the same or similar rates, terms, provisions or conditions in any formal

interconnection or other agreement entered into by the Parties after the date hereof or any other agreement entered into by either Party with any other person, and each Party expressly reserves its full right to hereafter assert and pursue different, contrary, inconsistent and additional rates, terms, provisions and conditions. The provisions of this Section shall survive the expiration, cancellation or termination of this Arrangement.

9.0 EFFECTIVE DATE & APPROVAL

This Arrangement shall be effective as of the date it is executed by the second Party hereto. Either Party may submit this Arrangement to the South Carolina Public Service Commission (“Commission”) for approval pursuant to 47 U.S.C. § 252. In the event that the Commission rejects this Arrangement, the Parties agree to petition the Commission to establish the terms and conditions applicable to their exchange of traffic.

Charter Fiberlink, SC-CCO, LLC

Piedmont Rural Telephone Cooperative, Inc.

By: _____

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BEFORE
THE PUBLIC SERVICE COMMISSION
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In re:

Petition of Charter Fiberlink SC – CCO, LLC
for Arbitration of Certain Terms and
Conditions of Proposed Agreement with
Piedmont Rural Telephone Cooperative, Inc.
Concerning Interconnection under the
Communications Act of 1934, as amended by
the Telecommunications Act of 1996

CERTIFICATE OF SERVICE

I, Rebecca W. Martin, Secretary for McNair Law Firm, P. A., do hereby certify that I have this date served one (1) copy of a Return To Motion regarding the above-referenced matter on the following parties of record by causing said copies to be hand delivered by McNair Law Firm courier at the addresses shown below.

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May 22, 2006

Columbia, South Carolina